

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1461 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHANTABEN WIFE OF DEVJIBHAI SHANABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1461 of 2003
MR ANMOL SHARON for Petitioner No. 1
MS E.SHAILAJA for Petitioner No. 1
MR HH PATEL AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/04/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 9.6.2002 passed against the detenu by the District Magistrate, Kheda at Nadiad, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The detenu has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. It is pointed out by the learned counsel for the petitioner in detail that the detenu has been wrongly detained and branded as a dangerous person and therefore the order of detention requires to be quashed. Alternatively, it is submitted that the plea of the petitioner should be accepted that the detenu has directly or indirectly been prevented from making effective representation against the order of detention and therefore the continued detention should be turned down and he should be released forthwith.

3. The petitioner has challenged the legality and validity of the order of detention on various grounds but the learned counsel Ms Shailaja has concentrated on two grounds, namely, (i) the detaining authority has failed in supplying to the detenu all the relevant documents which have been directly or indirectly considered by the detaining authority while recording his subjective satisfaction; and (ii) the registration of four criminal offences is mainly considered by the detaining authority and even for the sake of argument it is accepted that some other incidents have also occurred, as stated by three unnamed witnesses, then also the undue delay in passing the order of detention goes to the root or validity of the order of detention as well as continued detention of the detenu. She has pointed out that the statements of three unnamed witnesses have been recorded on 18th, 19th and 20th April 2002 by the sponsoring machinery i.e. Police Inspector, Nadiad Town Police Station. These three witnesses were taken before the Deputy Superintendent of Police, Nadiad, and their statements were verified. The date of proposal received by the District Magistrate is not reflected in the grounds of detention sent to the detenu but the papers supplied to the detenu clearly indicate that the statements of these three witnesses have been verified by the detaining authority on 27th May 2002. This delay of around one month adversely affects the validity and propriety of the order of detention. It was possible during this period of 27-28 days to re-arrest the detenu in exercise of the powers under Section 151 of the

Criminal Procedure Code and to get the surety bond. If the detaining authority is of the view that in a given case there is no scope for alternative less drastic remedies than the order of detention should have been passed as expeditiously as possible or if there is any delay in passing the order of detention, then the delay so caused should be reasonably and convincingly explained. In absence of such explanation, the order of detention passed cannot sustain and the grounds for detention does not disclose any reason for the time spent in verifying the statement of the learned District Magistrate. Even after verification on 27th May 2002 the formal order of detention has been passed on 9th June 2002. Again, this delay of about 12 days also adversely affects the validity of the order.

4 It is also important to note that four different offences registered by Nadiad Town Police Station does not take this Court to the conclusion that the activity of the petitioner was at any point of time dangerous to the maintenance of public order. The first two complaints have been filed because of the quarrel between two groups. The first complaint deals with the second event occurred. Total four persons have been named in the FIR but it is not clear that whether all these four have been detained by the authority. The third offence registered is about the incident occurred during the communal disturbance in the State of Gujarat and it seems that the petitioner was found to be in a mob, even the case of the prosecution is accepted as it is, which had committed criminal wrong for the members of the other community. I am told that the detenu has been enlarged on bail by the competent court. I am not in agreement with the argument advanced by learned AGP Mr Patel that the involvement of the detenu in a riot case should be viewed seriously and therefore it has been viewed seriously by the detaining authority. The registration of all these four offences should be viewed as a continuing criminal activity and he has been rightly branded as a dangerous person or a headstrong man. Mr Patel has placed reliance on the decisions reported in Roshanbibi Pathan v/s Commissioner of Police 1990(2) GLH page 1 and Indersing Gulabsing v/s State of Gujarat 1993(2) GCD pp. 842 (Guj.). Both these decisions have been considered by this Court while dealing with Special Civil Application No.4868 of 2002 (Mohmadhanif Nizambhai Shaikh (Lightwala) v. Commissioner of Police). Merely because the petitioner is one of the accused in one of the offences registered in Nadiad Town Police Station during the communal riots he ought not to have been detained because such detention is an incarceration in

jail without trial. On going through the FIR of the fourth offence also the Court is of the view that the activity of the detenu cannot be said to be a challenge to the maintenance of the public order. The even tempo of the life normally gets disturbed as and when any serious offence is committed at a public place but the establishment of the peace in a couple of minutes or hours becomes relevant and therefore the detaining authority is supposed to consider all such relevant aspects when he is called upon to pass harsh order of detention by the sponsoring machinery.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 9.6.2002 passed against the detenu by the District Magistrate, Kheda at Nadiad, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

10-03-2003 [C.K.BUCH, J]

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